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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

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16 and Counterdefendant
17 Universal City Studios, Inc.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 UNIVERSAL CITY STUDIOS, INC.,
13 a corporation,
14
15 Plaintiff,

16 vs.

17 RKO GENERAL, INC., a corporation,
18 DINO DE LAURENTIIS CORPORATION,
19 a corporation, and RICHARD COOPER,
20
21 Defendants.

No. CV 75-3526 2

22 RKO GENERAL, INC., a corporation,
23
24 Defendant and
25 Counterclaimant,

26 vs.

27 UNIVERSAL CITY STUDIOS, INC.,
28 a corporation,
29
30 Plaintiff and
31 Counterdefendant.

32 RICHARD COOPER,

Defendant and
Cross-Complainant,

vs.

RKO GENERAL, INC., a corporation,
Defendant and
Cross-Defendant.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

A002168

1032

1 This cause came on regularly for trial commencing
2 on September 1, 1976, before the Court sitting without a jury,
3 Gang, Tyre & Brown by Bruce M. Ramer and Stanley P. Gold, and
4 Rosenfeld, Mayer & Susman by Allen E. Susman and Stephen A.
5 Kroft, as attorneys for plaintiff and cross-defendant Universal
6 City Studios, Inc. ("Universal"); Lillick, McHose & Charles by
7 Anthony Liebig, Kenneth E. Kulzick and Andrew W. Robertson, and
8 Youngman, Hingate & Leopold by Louis P. Petrich, attorneys for
9 defendant, counterclaimant and cross-defendant RKO General,
10 Inc. ("RKO"); and Radison, Pfaelzer, Woodard, Quinn & Rossi by
11 Richard K. Simon and Lee L. Blackman, attorneys for defendant
12 and cross-complainant Richard Cooper ("defendant Cooper");
13 no appearance at trial by counsel for defendant Dino DeLaurentiis
14 Corporation having been made. The Court, having heard the
15 testimony and having examined the proofs and evidence offered
16 by the respective parties, the counterclaim by defendant Dino
17 DeLaurentiis Corporation having heretofore been dismissed pur-
18 suant to stipulation and order thereon, and the cause having
19 been submitted for decision, and the Court being fully advised
20 in the premises, makes its findings of fact, as follows:

21
22 UNIVERSAL'S COMPLAINT

23 FINDINGS OF FACT

24 1. The work entitled "King Kong" (sometimes re-
25 ferred to herein as the "Story") consists of the story of the
26 search for, and discovery of, a giant gorilla known as "Kong"
27 or "King Kong," and his ultimate capture and destruction. The
28 story includes all of the elements thereof, including, without
29 limitation, the characters, characterizations, character names,
30 the interplay and development of such characters, the plots,
31 action, dialogue, themes, settings and all other parts and
32 portions thereof (collectively, "elements"), as contained in

1 the Mystery Magazine Serializations (as defined below) and the
2 Novel (as defined below). The Story was published and copy-
3 righted in the following chronological order:

4 (a) The first segment of the Story was pub-
5 lished by Tower Magazines, Inc. in the February 1933 issue of
6 its publication entitled "Mystery Magazine" (~~the~~ ^{hereafter} "First
7 Serialization") and copyrighted in its name; the date of first
8 publication thereof was December 20, 1932.

9 (b) The entire Story was published in the form
10 of a novel entitled "King Kong" (~~the~~ ^{hereafter} "Novel"), by Grosset
11 & Dunlap, Inc. and copyrighted in its name; the date of first
12 publication thereof was December 27, 1932.

13 (c) The second segment of the Story was pub-
14 lished by Tower Magazines, Inc. in the March 1933 issue of
15 its publication entitled "Mystery Magazine" (~~the~~ ^{hereafter} "Second
16 Serialization") and copyrighted in its name; the date of first
17 publication thereof was January 23, 1933. (The First Serializa-
18 tion and the Second Serialization are jointly sometimes re-
19 ferred to herein as the "Mystery Magazine Serializations.")

20 (d) The Story was published in the form of a
21 motion picture entitled "King Kong" (~~the~~ ^{hereafter} "Motion Picture")
22 by RXO's predecessor and copyrighted in its name; the date of
23 first general release thereof was February 24, 1933. All right-
24 title and interest of such predecessor in the Motion Picture
25 have devolved upon RXO.

26 2. No renewal of the copyright in the Mystery
27 Magazine Serializations was attempted or secured by anyone.

28 3. Patricia Marion Caldecott Frere (~~the~~ ^{hereafter} "Frere"), a
29 daughter of Edgar Wallace (~~the~~ ^{hereafter} "Wallace"), filed an application for
30 a Claim to Renewal Copyright in the Novel on February 2, 1960,
31 claiming as the proprietor of a posthumous work. A Certificate
32 of Registration of a Claim to Renewal Copyright No. R 151,390

^{hereafter}
1 (~~the~~ "Frere renewal") was issued to her by the U.S. Copyright
2 Office. No one other than Frere applied for or received a
3 Certificate of Registration of a Claim to Renewal Copyright in
4 the Novel. In September 1964, Frere quitclaimed her interest
5 in the Frere renewal to Marian C. Cooper (^{Widow} "Cooper").
6
7 4. RKO renewed the copyright in the Motion Picture
8 on December 5, 1960, and was issued a Certificate of Registra-
9 tion of a Claim to Renewal Copyright No. R 267,274.
10
11 5. Prior to any contacts by Cooper with either RKO
12 or Wallace in 1931, Cooper had conceived and reduced to con-
13 crete expression the basic elements of the Story.
14
15 6. Wallace first started working with Cooper in
16 writing a screenplay to embody the Story not earlier than
17 December 23, 1931.
18
19 7. Cooper and Wallace executed a document dated
20 January 23, 1932, entitled an Assignment of All Rights, grant-
21 ing to RKO the right to produce and distribute a motion picture
22 embodying the Story, but reserving the right to publish the
23 Story in book and serial form. There is no evidence that, by
24 such reservation, Cooper and Wallace intended to or did alter
25 their respective rights and interests in the Story inter se.
26 by such assignment and reservation, Wallace did not receive any
27 ownership interest in the Story. Neither Wallace nor his Estate
28 at any time had an ownership interest, either legal or equi-
29 table, in the Story or the Novel or the Mystery Magazine Seriali-
30 zations.
31
32 8. Wallace died on February 10, 1932, a resident of
London, England, survived by his widow and children, among them
Frere. In 1932, after Wallace's death, all of his rights in
literary properties and copyrights passed to his Estate. There-
after, on May 25, 1934, all such rights passed to a British
corporation called Edgar Wallace, Ltd.

1 9. Wallace wrote a screenplay containing elements of
2 the Story previously conceived by Cooper prior to Wallace's
3 death.

4 10. The screenplay written by Wallace was abandoned and
5 was not utilized in the production of the Motion Picture or in
6 the writing of the Mystery Magazine Serializations or the Novel.

7 11. The Motion Picture as produced was based upon
8 a screenplay written by James Ashmore Creelman and Ruth Rose
9 after the death of Wallace, and does not use or embody, and
10 was not based upon, any contribution by Wallace.

11 12. Wallace did not create, contribute or write any-
12 thing contained in the Motion Picture, the Mystery Magazine
13 Serializations or the Novel. Specifically, but not in limita-
14 tion of the foregoing, it is not true that Wallace created,
15 contributed to or wrote: (i) any of the elements of the Story,
16 including any elements of the Motion Picture, Novel and Mystery
17 Magazine Serializations; (ii) any ideas or elements concerning
18 King Kong's undressing the heroine; or (iii) any ideas or
19 elements concerning the fight scene between King Kong and a
20 meat-eating dinosaur, or the treatment of the heroine during
21 such scene.

22 13. In or around September 1932, RKO arranged for
23 publication of the Mystery Magazine Serializations. Cooper
24 was aware of and authorized these arrangements prior to such
25 publication.

26 14. Subsequent to the publication of the First
27 Serialization, Cooper also consented to and ratified such pub-
28 lication.

29 15. The Estate of Wallace ("Wallace Estate"), through
30 its legal representative, T. M. Till, consented to and ratified
31 the publication of the Mystery Magazine Serializations by agree-
32 ing with Cooper to accept one-half of Cooper's receipts from

1 the exploitation of said Mystery Magazine Serializations and by
2 making no objection to such publication thereafter.

3 16. RKO and Cooper arranged for, and Cooper authorized,
4 publication of the Novel by Grosset & Dunlap, Inc., and Cooper
5 permitted Grosset & Dunlap, Inc. to copyright the Novel in its
6 name as the copyright proprietor.

7 17. The writing, and all arrangements for publication,
8 of the Mystery Magazine Serializations and of the Novel were
9 made after the death of Wallace.

10 18. The Wallace Estate, through its legal representa-
11 tive, T. M. Till, consented to and ratified the acts of Cooper
12 described in Finding of Fact No. 16, above, by agreeing with
13 Cooper to accept one-half of Cooper's receipts from the exploita-
14 tion of the Novel and by making no objection to its publication
15 thereafter.

16 19. At all times appropriate for the filing of ap-
17 plication for, or issuance of, Certificate of Registration of
18 a Claim to Renewal Copyright in the Novel, Frere was not the
19 distributee, assignee or successor in interest to any claim of
20 ownership of the Wallace Estate in the Novel or the copyright
21 therein.

22 20. At all times appropriate for the filing of ap-
23 plication for, or issuance of, Certificate of Registration of a
24 Claim to Renewal Copyright, Frere was not the distributee, as-
25 signee or successor in interest to any claim of ownership of
26 Edgar Wallace, Ltd. in the Novel or the copyright therein.
27 Frere, in filing the copyright renewal application in her name
28 was not authorized to, and did not, act on behalf of Edgar
29 Wallace, Ltd.

30 21. At all times appropriate for the filing of
31 application for, or issuance of, Certificate of Registration
32 of a claim to Renewal Copyright in the Novel, Grosset & Dunlap,

1 Inc. was the proprietor of the copyright in the Novel. 1

2 22. Cooper died on April 21, 1973. Defendant Cooper 2
3 has succeeded to all claimed right, title and interest of Cooper 3
4 in the subject matter of this action. 4

5 23. Universal is engaged, among other things, in 5
6 the business of producing and distributing motion pictures. 6
7 It presently intends, and has the present ability, to make 7
8 a motion picture based on the story or elements thereof as con- 8
9 tained in the Mystery Magazine Serializations and the Novel, 9
10 when the decision in this action permitting it so to do becomes 10
11 final. 11

12 24. In furtherance of its aforementioned intention, 12
13 Universal has expended substantial time, effort and money on 13
14 production activities prior to commencement of principal photo- 14
15 graphy. As a result thereof, it has, among other things, 15
16 developed valuable techniques, mechanical devices and other equip- 16
17 ment which it intends to utilize in production of its motion 17
18 picture when permitted to do so by final judgment in this action. 18

19 25. A dispute exists between plaintiff and defendants, 19
20 as follows: 20

21 (a) RKO and defendant Dino DeLaurentiis Corpora- 21
22 tion assert that RKO has exclusive rights (except to the extent 22
23 of any rights which may have been reserved originally by Cooper 23
24 and Wallace, and except insofar as licensed by RKO) to the 24
25 story by virtue of its copyright and renewal copyright in the 25
26 Motion Picture. 26

27 (b) The defendant Cooper asserts that the Mystery 27
28 Magazine Serializations were unauthorized by Cooper and there- 28
29 fore did not divest the story of common law copyright protec- 29
30 tion; and that the copyright in the Novel has been validly re- 30
31 newed and is owned by him. 31

32 / / / 32

1 (c) Universal asserts that the Story is in the
2 public domain and that it has the right to make a motion picture
3 based on and using the Story or elements thereof, as contained
4 in the Mystery Magazine Serializations and the Novel so long as
5 Universal's motion picture does not copy other copyrightable
6 materials which are contained in the Motion Picture but which
7 are not contained in the Mystery Magazine Serializations or the
8 Novel.

9
10 CONCLUSIONS OF LAW

11 1. This action arises under the Copyright Act of
12 the United States, Title 17, United States Code. A case of
13 actual controversy exists between Universal, on the one hand,
14 and the defendants, on the other. The Court has jurisdiction
15 of this action pursuant to the provisions of Title 28, United
16 States Code, Sections 1338(a) and 2201.

17 2. The first segment of the Story, as embodied in
18 the First Serialization, is now, and since the expiration on
19 December 20, 1960 of the original term of copyright therein has
20 been, in the public domain.

21 3. The entire Story, as embodied in the Novel, is
22 now, and since the expiration on December 27, 1960 of the
23 original term of copyright therein has been, in the public
24 domain.

25 4. The second segment of the Story, as embodied in
26 the Second Serialization, is now, and since the expiration on
27 January 23, 1961 of the original term of copyright therein has
28 been, in the public domain.

29 5. Wallace was not an author or joint author of the
30 Story under the Copyright Act, and neither Wallace, the Wallace
31 Estate, Edgar Wallace, Ltd. nor Frere was a legal or equitable
32 owner or joint owner of the Story, the Novel or the Mystery

1 Magazine Serializations, or the copyrights therein. Neither
2 Grosset & Dunlap, Inc. nor Cooper ever owned or held any title
3 or interest in the Novel or copyright therein as trustee, con-
4 structive or otherwise, for Wallace, the Wallace Estate, Edgar
5 Wallace, Ltd. or Frere.

6 6. The purported renewal of copyright in the Novel by
7 Frere was invalid, and the Certificate of Registration of a Claim
8 to Renewal Copyright issued to her was and is of no force or
9 validity.

10 7. The publication of the Story in the Mystery Maga-
11 zine Serializations and the Novel divested the Story of common
12 law copyright protection. After such publication, the only
13 protection for the Story as contained in the Mystery Magazine
14 Serializations and the Novel was under the Copyright Act of the
15 United States. The Motion Picture is a derivative work, having
16 been published and copyrighted subsequent to the publication
17 and copyright of the Novel and the Mystery Magazine Serializa-
18 tions. Consequently, from and after the time that the Novel
19 and Mystery Magazine Serializations entered the public domain,
20 only the copyrightable matter in the Motion Picture which is
21 not contained in the Novel or Mystery Magazine Serializations
22 has been and is protected by RXO's copyright and renewal copy-
23 right in the Motion Picture.

24 8. Universal may produce, sell, distribute and ex-
25 hibit a motion picture based on and using the Story or elements
26 thereof so long as Universal does not copy copyrightable matter
27 contained in the Motion Picture but not contained in the Mystery
28 Magazine Serializations or Novel. Such a motion picture will
29 not infringe upon the copyright in RXO's Motion Picture or upon
30 any other of defendants' rights.

31 9. Universal is entitled to judgment in its favor
32 on the Complaint.

1 To the extent that any of the Findings of Fact set
2 forth above are deemed to be Conclusions of Law, or to the ex-
3 tent that any of the foregoing Conclusions of Law are deemed
4 to be Findings of Fact, the same shall be deemed Conclusions
5 of Law or Findings of Fact, as the case may be.
6

7 RKO'S COUNTERCLAIM - COUNT 1

8 FINDINGS OF FACT

9 1. Findings of Fact Nos. 1 through 25, inclusive,
10 under the heading "Universal's Complaint," are hereby referred
11 to and are incorporated herein in full by this reference.
12

13 2. In or about August, 1975, Universal employed
14 Robert "Bo" Goldman ("Goldman"), a professional screenwriter,
15 to write a screenplay using elements of the Story.
16

17 3. After his employment by Universal but before he
18 commenced writing his screenplay, Goldman viewed the Motion
19 Picture. He made a tape recording of the soundtrack thereof
20 on his own initiative, and was not instructed to do so by
21 Universal. Neither Goldman nor Universal published, performed,
22 distributed, disseminated, sold or offered for sale or hearing
23 Goldman's tape recording to the public.
24

25 4. Goldman delivered a screenplay written by him to
26 Universal which was revised as of November 21, 1975 (the "Gold-
27 man Screenplay").
28

29 5. After November 21, 1975, the Goldman Screenplay
30 was further revised for the purpose, among others, of deleting
31 from it all material which is found only in the Motion Picture
32 and not in the Novel or Mystery Magazine Serializations. After
33 November 21, 1975, all such material was deleted from the
34 Goldman Screenplay.

35 6. The final draft of the Goldman Screenplay does
36 not contain any material or elements which are found only in the

Wesley. Shane and O'Shea further agree that the four year period referred to in paragraphs 4 and 5 of the two page typed memorandum be reduced to three and one-half years.

1 Motion Picture and not in the Novel or Mystery Magazine Serializa-
2 tions.

3 7. Universal at all times had RKO's consent to pro-
4 duce, sell and distribute a motion picture copying the Motion
5 Picture or any portions thereof, by reason of the following:

6 (a) On April 15, 1975, Universal, by and through
7 its authorized agent, Arnold Shane ("Shane"), and RKO, by and
8 through its authorized agent, Daniel T. O'Shea ("O'Shea"), enter-
9 ed into a valid oral contract by which Universal acquired an ex-
10 clusive license from RKO to produce, sell and distribute under
11 the title "King Kong" a remake of the Motion Picture and an option
12 to produce, sell and distribute a sequel thereto and to utilize
13 in such remake and sequel all or any portion of the Motion Pic-
14 ture (the "April 15, 1975 contract"). The terms of said contract
15 are contained in a two-page typed memorandum dated April 15,
16 1975, entitled "Outline of Deal with RKO GENERAL" (the "Deal
17 Memo") (Exhibit 93) and Universal's standard net profits rider
18 (Exhibit 98), both of which were delivered to O'Shea. O'Shea was
19 authorized by RKO to enter into said contract on behalf of RKO.

20 (b) At all times from 1961 through December 31,
21 1975, RKO expressly granted to O'Shea, orally and by its con-
22 duct, full authority to enter into contracts, oral and written
23 for the sale and licensing of rights in the Motion Picture and
24 in RKO's other literary properties and motion pictures. At all
25 times from 1961 through December 31, 1975, RKO, by its actions
26 and conduct during said period, caused O'Shea reasonably to be-
27 lieve, and O'Shea at all such times did reasonably believe,
28 that O'Shea had such authority; and at all such times O'Shea
29 had and exercised such authority.

30 (c) RKO, in its actions and conduct during the
31 period from 1961 through December 31, 1975, caused third
32 parties, including Universal in entering into the April 15,

1 1975 contract, to rely upon the authority of O'Shea to nego-
2 ciate and enter into contracts on behalf of RKO for the sale and
3 license of rights in the Motion Picture and RKO's other literary
4 properties and motion pictures. At no time did RKO notify
5 Universal of any limitation upon the authority of O'Shea to
6 enter into such contracts on behalf of RKO; Universal had no
7 knowledge of any such limitation, except that Universal knew
8 that O'Shea consulted with others at RKO before he made such
9 contracts on behalf of RKO.

10 (d) The aforesaid authority of O'Shea to enter
11 into the aforesaid contracts and the April 15, 1975 contract
12 with Universal was not required to be in writing because O'Shea
13 had and exercised the full, actual, ostensible and apparent
14 authority of RKO at all times from 1961 through December 31,
15 1975 to enter into such contracts on behalf of RKO.

16 (e) The April 15, 1975 contract was capable of
17 performance within one year from the date of its making.

18 (f) On the morning of April 16, 1975, John S.
19 Poor, Chairman of the Board of Directors of RKO, acquiesced in
20 the April 15, 1975 contract and thereby ratified such contract.
21 Shane was aware of Poor's acquiescence on the morning of April
22 16, and this was known to Poor and O'Shea. On April 16, 1975,
23 in reasonable reliance upon Poor's acquiescence and upon the
24 aforesaid conduct of RKO and O'Shea, Universal employed Hunt
25 Stromberg ("Stromberg") to produce Universal's "King Kong"
26 motion picture and thereby committed itself to pay, and paid,
27 Stromberg a total salary of \$62,400 (i.e., \$1,200 per week
28 for one year).

29 8. Universal has not published, exhibited, dis-
30 tributed, disseminated, sold or offered for sale or viewing
31 to the public the Goldman Screenplay or any copies or drafts
32 thereof.

9. Universal has not received any revenues or profits from the Goldman Screenplay or any drafts thereof, or from any of Universal's conduct set forth hereinabove.

10. RKO has not lost any revenue or sustained any damage as a result of the writing of the Goldman Screenplay or any of Universal's conduct set forth hereinabove.

11. Universal filed and prosecuted the Complaint
and defended RXO's Counterclaim in the above action in good
faith and with the true belief that Universal's conduct as
described hereinabove would not infringe RXO's copyright in
the Motion Picture.

CONCLUSIONS OF LAW

1. Count I of RKO's Counterclaim is a claim by RKO against Universal for copyright infringement, and arises under the Copyright Act of the United States, Title 17, United States Code. The Court has jurisdiction over Count I of RKO's Counterclaim pursuant to the provisions of Title 28, United States Code, Section 1338(a).

2. Conclusions of Law Nos. 2 through 8, inclusive, under the heading "Universal's Complaint" are hereby referred to and are incorporated herein in full by this reference.

23 3. Neither the Goldman Screenplay nor any element
24 thereof constitutes an infringement of, and Universal has not
25 infringed upon, RXO's copyright in the Motion Picture.

4. The April 15, 1973 contract is valid and subsisting and constitutes consent by RKO to Universal's conduct as set forth in the foregoing Findings of Fact.

3. The statute of frauds is a defense only. The statute of frauds and equal dignities doctrine do not vitiate the effect of RXO's aforesaid oral consent. To the extent that the statute of frauds and equal dignities doctrine could legally

1 vitiate RKO's oral consent, RKO is estopped by its conduct and
2 by the conduct of Poor and O'Shea (a) to assert the defense of
3 the statute of frauds and that the April 13, 1973 contract is in-
4 valid, voidable or unenforceable because it is not in writing,
5 and (b) to deny O'Shea's authority to enter into said contract
6 on behalf of RKO and to assert the equal dignities doctrine with
7 respect to O'Shea's said authority.

8 6. RKO is not entitled to an injunction and is not
9 entitled to damages or any other relief against Universal on
10 Count I of RKO's Counterclaim; Universal is entitled to a
11 judgment in its favor on Count I of said Counterclaim.

12 To the extent that any of the Findings of Fact set
13 forth above are deemed to be Conclusions of Law, or to the ex-
14 tent that any of the foregoing Conclusions of Law are deemed to
15 be Findings of Fact, the same shall be deemed Conclusions of
16 Law or Findings of Fact, as the case may be.

17
18 RKO'S COUNTERCLAIM - COUNT II

19 FINDINGS OF FACT

20 1. Count II of RKO's Counterclaim is a claim by
21 RKO against Universal for unfair competition and arises out of
22 the same facts (or facts substantially related thereto) which
23 support this Court's jurisdiction over Count I of RKO's Counter-
24 claim.

25 2. Findings of Fact Nos. 1 through 25, inclusive,
26 under the heading "Universal's Complaint," and Finding of Fact
27 No. 7 under the heading "RKO's Counterclaim - Count I," are
28 hereby referred to and are incorporated herein in full by this
29 reference.

30 3. RKO has caused the Motion Picture to be distribut-
31 ed and exhibited under RKO's name. ~~RKO has not introduced any~~
32 ~~evidence showing either the duration of such distribution and~~

~~exhibition of the ideas of the world for peace and space~~

the United States) in which such distribution and exhibition
continued.

4. During the past 17 years, many literary properties,
songs and phonograph record albums have been published and
copyrighted by parties other than RKO in the United States
using the name and title "King Kong." The name "King Kong"
has also during such period been used by parties other than
RKO in various printed cartoons and comic strips in the United
States. There is no evidence that any of the aforesaid uses
of the name and title "King Kong" were licensed by RKO.

5. ^{is no evidence that the title} The title "King Kong" ~~does not have~~ has a
secondary
meaning by which the public identifies such title with RKO
or the Motion Picture.

6. The name "King Kong" has become part of the
ordinary English language.

7. In November, 1975, Universal caused a press re-
lease and trade advertisement to be published in which Universal
stated that it intended to produce a motion picture entitled
"The Legend of King Kong," based on the novel "King Kong" by
Delos W. Lovelace.

8. Universal did not pass off its announced motion
picture as being based upon or having any connection with the
Motion Picture. Universal did not deceive the public and there
is no likelihood that the public was confused, into believing
that Universal's announced motion picture was or would be based
upon or have any connection with the Motion Picture. Universal
did not pass off its announced motion picture or deceive the
public, and there is no likelihood that the public was confused,
into believing that Universal's motion picture was connected
with, licensed or sponsored by RKO.

///

9. By virtue of RKO's consent to Universal's production of its motion picture, Universal also had RKO's express and implied consent to publish the press release and trade advertisement referred to above.

10. Publication of Universal's trade advertisement and press release did not dilute the value of any of RKO's claimed rights in the name, title or character "King Kong," nor did such publication disparage or slander any of RKO's claimed rights in the name, title or character "King Kong."

11. Universal has not received any revenues or profits from the publication of its trade advertisement or press release or from the use by Universal of the name and title "King Kong."

12. RKO has not lost any revenue or sustained any damage as a result of the publication of Universal's trade advertisement or press release or as a result of the use by Universal of the name and title "King Kong."

13. Universal did not publish its trade advertisement
or press release or use the name and title "King Kong" with
malice toward RKO or with the intent to vex, harass, annoy or
injure RKO, or with the intent to oppress RKO or to subject RKO
to any hardship in conscious disregard of any rights of RKO.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over Count II of
RXO's Counterclaim under the doctrine of pendant jurisdiction.

2. Conclusions of Law Nos. 2 through 8, inclusive,
under the heading "Universal's Complaint," and Conclusions of
Law Nos. 1, 4 and 5 under the heading "RKO's Counterclaim -
Count I," are hereby referred to and are incorporated herein
in full by this reference.

32 / / /

3. Universal has not diluted or disparaged the value of the name, title or character "King Kong" and has not diluted or disparaged any claimed rights of RKO herein.

4. Since Universal is free to produce and distribute a motion picture based on the Novel and Mystery Magazine serializations, it was and is free to entitle said motion pictures "King Kong" and to advertise its plans to do so in the manner set forth in Findings of Fact Nos. 7 and 8, under the heading "RKO's Counterclaim - Count II."

5. Universal has not unfairly competed with RKO and has not infringed upon any claimed rights of RKO in the name, title or character "King Kong."

6. Universal did not act with malice or oppression toward RKO in engaging in any of the conduct set forth in Findings of Fact Nos. 7 and 8 under the heading "RKO's Counterclaim - Count II."

7. RKO is not entitled to an injunction and is not entitled to compensatory or punitive damages or any other relief against Universal on Count II of RKO's Counterclaim; Universal is entitled to a judgment in its favor on Count II of RKO's Counterclaim.

To the extent that any of the Findings of Fact set forth above are deemed to be Conclusions of Law, or to the extent that any of the foregoing Conclusions of Law are deemed to be Findings of Fact, the same shall be deemed Conclusions of Law or Findings of Fact, as the case may be.

Dated: November 24, 1976

31 AUG 1982

CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA



United States District Judge